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OFFICE OF PETITIONS

In re Application of :
Zustack, et al. :
Application No. 09/774,458 :
Filed: January 31, 2001 :
Attorney Docket No. SNY-P4143 :
DECISION GRANTING PETITION

This is a decision on the petition under 37 CFR 1.47(a) filed July 18, 2005. The petition will be treated under 37 CFR 1.182.

The petition is **granted**.

The above-cited application was filed on January 31, 2001, with a declaration under 37 CFR 1.63 executed by all named inventors. On November 21, 2005, the instant petition was filed wherein it is alleged that, after a diligent effort, inventor Yang cannot be located to execute the declaration under 37 CFR 1.131. Petitioner, therefore, requests status for the above-cited application under 37 CFR 1.47(a).

It is noted, that 37 CFR 1.47 is not applicable under the circumstances presented; this provision is only applicable when the inventor(s) refuses or is unavailable to sign the original declaration filed in the application under 37 CFR 1.63. Further to this point, Section 715.04 of the *Manual of Patent Examination Procedure* (MPEP) provides, in pertinent part, that:

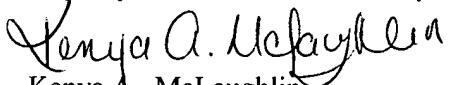
Affidavits or declarations to overcome a rejection of a claim or claims must be made by the inventor or inventor of the subject matter of the rejected claim(s), a party qualified under 37 CFR 1.42, 1.43, or 1.47, of the assignee or other party in interest when it is not possible to produce the affidavit or declaration of the inventor(s). Thus, where all of the named inventors of a pending application are not inventors of every claim of the application, any affidavit under 37 CFR 1.131 could be signed by only the inventor(s) of the subject matter of the rejected claims. Further, where it is shown that a joint inventor is deceased, refuses to sign, or is otherwise unavailable, the signatures of the remaining joint inventors are sufficient.

Based on the aforementioned, status under 37 CFR 1.47 is not necessary in order for the declaration under 37 CFR 1.131 filed without the signatures of all the joint inventors to be accepted. The petition is, therefore, treated under 37 CFR 1.182. As petitioner has established that inventors Yang cannot be located to sign the declaration under 37 CFR 1.131, the declaration under 37 CFR 1.131 filed July 18, 2005, will be accepted.

The fee for the instant petition is \$400.00. Deposit account 50-1267 will be charged an additional \$200.00, accordingly.

The application file will be directed to Technology Center 2600, GAU 2614 for further processing.

Any inquiries related to this decision should be directed to the undersigned at (571) 272-3222.



Kenya A. McLaughlin
Petitions Attorney
Office of Petitions